IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5219 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHOLANATH D PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioner No. 1

Mr. Sudhir Mehta, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/06/2002

ORAL JUDGEMENT

The petitioner, in this petition under Article 226 of the Constitution of India, has challenged the action of the respondent authorities of not giving promotion to the post of Naik, a Class-III post from the post of Sipoy. The petitioner has further prayed for mandatory relief from this Court seeking direction against the respondents to promote the petitioner to the

post of Naik from the date, his immediate junior was promoted to the said post and to confer upon the petitioner all consequential benefits such as fixation of salary, arrears of salary, seniority and all other consequential benefits on that basis.

2. This Court had issued the notice on 11.7.1988. On receipt of the notice of the petition, respondents appeared through their Advocate and affidavit-in-reply was intended to be filed and copy thereof was served to the petitioner's advocate on 20.9.1988. However, the said affidavit-in-reply is placed on record of this Court today during the course of hearing. Though the copy of the affidavit-in-reply was served on the petitioner's ld. advocate way back on 20.9.1988, there was no rejoinder of the affidavit filed on behalf of the petitioner.

3. Today, this matter was called out twice, but nobody appears on behalf of the petitioner. Mr. Sudhir Mehta, the learned Assistant Government Pleader appears on behalf of the respondents. The petition was opposed by the respondents on the ground that the petitioner was not found to be fit for the post of Naik by the promotion committee. The departmental promotion committee had considered the case of the petitioner in its meeting held on 31.7.1986 and on the basis of the confidential report the petitioner was not found to be fit by the committee and therefore the promotion was not given to the petitioner. It was further submitted that the promotion to the post of Naik was to be made from the post of Sipoy on the basis of seniority-cum-merit. The departmental promotion committee had considered the confidential report of the petitioner in its meeting held on 31.7.1986 and on the basis of the record and evidence the committee has come to the conclusion that the petitioner was positively found to be unfit for the promotion of Naik. The said decision of the departmental promotion committee was communicated to the petitioner and the petitioner thereafter moved an application on 1.9.1986 for reconsideration of his case for promotion to the post of Naik. The committee thereafter had reassembled for consideration of the petitioner's case and again the departmental promotion committee had come to the same conclusion and the said decision was also communicated to the petitioner vide letter dated 1.11.1986. It was further submitted that there was no question of linking any misconduct to the case of promotion as alleged by the petitioner. It was also made clear in the affidavit-in-reply that the punishment inflicted upon the petitioner in 1968 did not have any bearing on the consideration of the case of the petitioner for promotion

in 1986.

4. I have considered the facts of the petitioner's case as are found in the petition. The affidavit-in-reply on behalf of the respondent No.2 was also taken into consideration and I have also heard the learned Asst. Govt. Pleader. I am of the view that when the promotion is on the basis of seniority-cum-merit, there is no inherent right vested in the petitioner to claim the promotion. This fact was made clear in the affidavit-in-reply filed on behalf of respondent No.2. There is nothing on record to suggest that the respondents have acted in a mala fide manner and therefore no illegality was committed by them while denying the promotion to the petitioner. Though this Court has passed an order on 8.1.1991 making it clear that the pendency of the petition would not preclude the authorities from considering the case of the petitioner for promotion, nothing is produced before this Court as to whether the petitioner's case was subsequently considered for promotion. Taking any view of the matter, this Court does not think it proper to interfere in the decision taken by the respondent authorities. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

[K.A. Puj, J.]

rmr.